IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1117 OF 2005

Shri Balu Bapu Mulla ... Appellant

V/s

Shri Sidu Ijappa Gavade & ors. ... Respondents

Mr. T.D. Deshmukh for the appellant.

Mr. S.M. Kamble for respondent Nos. 1 & 2.

CORAM: P.V. KAKADE, J.

DATED: 3RD OCT., 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Kolhapur dated 11.2.2005 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, J.D., Pethvadgaon dated 4.9.2001 dismissing the suit.

2. I have heard the learned counsel for both sides. Perused the record.

3. The plaintiff filed the suit initially for

declaration and perpetual injunction against the defendants restraining them from causing any interference in the suit property.

4. It is to be noted that initially the plaintiff came with the case that he was in lawful possession of the suit property and defendants had obstructed his possession. Declaration was sought to the effect that the D.I.L.R. had made wrong entries in the record of right in respect of the suit property and, therefore, those entries should be cancelled. Further declaration was sought to the effect that various directions be issued to the D.I.L.R. However, it appears that, pending the trial, the appellant-plaintiff waived those pleas for declarations against the D.I.L.R. obviously for the reason that the D.I.L.R. in question was not made party to the suit. So far as the relief of perpetual injunction was concerned, the learned Trial Judge came to the conclusion that the plaintiff failed to prove that he was in lawful possession of the suit property and, as such, the suit came to be dismissed.

5. The appeal came to be filed in the District Court at Kolhapur. The learned Addl. District Judge, after hearing both parties on the basis of available evidence

concurred with the findings recorded by the lower Court and dismissed the appeal. Hence the present appeal.

6. At the outset, it is to be noted that there is absolutely no substantial question of law involved in this appeal. The entire evidence revolves around the factual issues in respect of the alleged possession of the plaintiff over the suit property. The plaintiff evidently failed to establish his title to the suit property and, therefore, there was no question of lawful possession over the suit property which aspect was dealt with by both the Courts below in detail holding that the available evidence was not sufficient to show that the plaintiff was in lawful possession. Under the circumstances, both the Courts are seen to have properly appreciated the entire evidence on record in proper perspective and it would brook no interference.

7. In the result, the appeal stands dismissed with no order as to costs. Consequently, Civil Application No.1606 of 2005 also stands dismissed with no order as to costs.

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